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Litigation + Business

VORDMAN CARLISLE TRAYWICK, III

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May 10, 2022

VIA ELECTRONIC FILING

The Honorable Jocelyn Boyd
Chief Clerk / Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Re: Mark Baker v. Duke Energy Progress, LLC
Docket No. 2022-155-E

Dear Ms. Boyd:

On April 27, 2022, the Clerk's office docketed the complaint filed in the above-referenced docket by Mark Baker on behalf of Soft Lights Foundation ("Complainant"). Pursuant to S.C. Code Ann. Regs 103-830, a respondent has 30 days from receipt of the complaint to file and serve its answer. Therefore, Duke Energy Progress, LLC's (the "Company" or "DEP") answer to the complaint is due May 27, 2022.

On May 2, 2022, Sandra Moser was assigned as Hearing Examiner in this docket and a scheduling notice was issued. The notice set the following procedural schedule:

DEP and ORS Direct Testimony:	June 6, 2022
Complainant Responsive Testimony:	June 13, 2022
Virtual Hearing:	August 24, 2022

Here, Complainant has filed a complaint on behalf of an organization in Oregon—not an individual customer in South Carolina—and raised complex allegations about whether LED lights are harmful. Given the unique circumstances of this case, and in light of Complainant's obligation to support its claims, the Company respectfully requests that the Clerk's office issue a revised scheduling notice that requires Complainant to file its testimony first. Based on the complaint, the Company is unclear as to what the factual and legal issues are, much less what relief Complainant seeks, in this case. *Cf.* S.C. Code Ann. Regs. 103-824(A)(3)-(4).

Generally, the party who bears the burden of proof—an applicant, complainant, or petitioner—is required to file testimony first. S.C. Code Ann. Regs. 103-842(C), in particular, provides that, in complaint proceedings such as this one, evidence is ordinarily received from the Complainant first, followed by Respondent and other parties. Recent complaint proceedings involving the Company have followed this order of operations. See Ex. A, Prefile Testimony Letters in Docket Nos. 2020-242-E, 2019-204-E, 2018-379-E, and 2017-32-E.



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May 10, 2022
Page: 2

Requiring the party with whom the burden of proof rests—Complainant here—to file his testimony first is in accord with common civil practice and principles of procedural fairness. See Order No. 1996-259-WS at 2, Docket No. 1996-629 (Sept. 10, 1996); see also *State v. Beaty*, 423 S.C. 26, 39, 813 S.E.2d 502, 509 (2018) (stating Rule 43(j), SCRCP, “provides that the plaintiff shall have the right to open and close at the trial of the case and must open in full”); S.C. Code Ann. Regs. 103-802 (“[The Commission’s regulations concerning Practice and Procedure] are intended to insure that all parties participating in proceedings before the Commission will be accorded the procedural fairness to which they are entitled by law.”); *Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 381, 453 S.E.2d 880, 883 (1994) (“[A] reviewing court has the duty to examine the procedural methods employed at an administrative hearing to ensure that a fair and impartial procedure was used.”).

Where, as here, the Company and the Commission have only a few vague sentences expressing a generalized grievance about LED lights, the Commission should afford the Company an opportunity to better understand Complainant’s position and request for relief before being required to present its defense. Complainant should file his direct testimony first. Accordingly, for good cause shown, the Company respectfully requests a revised procedural schedule.

In addition to the request for an updated procedural schedule, I have enclosed for filing a Notice of Appearance, along with a Certificate of Service, for myself on behalf of DEP in this docket.

By copy of this letter we are serving the same on the parties of record.

Very truly yours,

Vordman Carlisle Traywick, III

VCT:tch

Attachment

cc w/attachment via email:

Sandra Moser, Hearing Examiner (via email)
Samuel J. Wellborn, Associate General Counsel (via email)
Katie M. Brown, Counsel (via email)
Parties of Record (via email)



The Public Service Commission State of South Carolina

Jocelyn Boyd
Chief Clerk/Executive Director
Phone: (803) 896-5100
Fax: (803) 896-5246

COMMISSIONERS
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Clerk's Office
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Fax: (803) 896-5199

October 22, 2020

IN RE: DOCKET NO. 2020-242-E – Enrique McMillon, Jr., Complainant/Petitioner v. Duke Energy Carolinas, LLC,
Defendant/Respondent

TO: ALL PARTIES OF RECORD
Pursuant to S.C. Code Ann. Regs. 103-845:

1. The **Complainant/Petitioner** must prefile with the Commission 1 copy of the direct testimony and exhibits of the Witnesses it intends to present and serve the testimony and exhibits of the Witnesses on all Parties of Record on or before **December 8, 2020**. (must be post-marked on or before this date).
2. **The Defendant/Respondent and the Office of Regulatory Staff** must prefile with the Commission 1 copy of direct testimony and exhibits of the Witnesses they intend to present and serve the testimony and exhibits of the Witnesses on all Parties of Record on or before **December 22, 2020**. (must be post-marked on or before this date).
3. The **Complainant/Petitioner** filing **Rebuttal Testimony** must prefile with the Commission 1 copy of the testimony and exhibits of the Witnesses it intends to present and serve the testimony and exhibits of the Witnesses on all Parties of Record on or before **December 29, 2020**. (Rebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the Parties on this date).
4. The **Defendant/Respondent and the ORS** filing **Surrebuttal Testimony** must prefile with the Commission 1 copy of the testimony and exhibits of the Witnesses they intend to present and serve the testimony and exhibits of the Witnesses on all Parties of Record on or before **January 5, 2021**. (Surrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the Parties on this date).

Please be advised that failure to comply with the instructions contained herein could result in your proposed Witnesses' testimony and exhibits being excluded in the subject proceeding. Additionally, please note that failure to comply with the above on or before the dates indicated may result in the DISMISSAL of your pleading.

Sincerely,

Clerk's Office



The Public Service Commission State of South Carolina

Jocelyn Boyd
Chief Clerk/Executive Director
Phone: (803) 896-5133
Fax: (803) 896-5246

EXHIBIT A

COMMISSIONERS
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Clerk's Office
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June 17, 2019

IN RE: DOCKET NO. 2019-204-E – *CONFIDENTIAL* Meserve, Complainant/Petitioner v. Duke Energy Carolinas, LLC, Defendant/Respondent (Entire Complaint Available for Viewing upon Written Request)

TO: ALL PARTIES OF RECORD
Pursuant to S.C. Code Ann. Regs. 103-845:

1. The **Complainant/Petitioner** must prefile with the Commission 1 copy of the direct testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **August 1, 2019**. (must be post-marked on or before this date).
2. The **Defendant/Respondent and the Office of Regulatory Staff** must prefile with the Commission 1 copy of direct testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **August 15, 2019**. (must be post-marked on or before this date).
3. The **Complainant/Petitioner** filing **Rebuttal Testimony** must prefile with the Commission 1 copy of the testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **August 22, 2019**. (Rebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on this date).
4. The **Defendant/Respondent and the ORS** filing **Surrebuttal Testimony** must prefile with the Commission 1 copy of the testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **August 29, 2019**. (Surrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on this date).

Please be advised that failure to comply with the instructions contained herein could result in your proposed witnesses' testimony and exhibits being excluded in the subject proceeding. Additionally, please note that failure to comply with the above on or before the dates indicated may result in the DISMISSAL of your pleading.

Sincerely,

Clerk's Office

EXHIBIT A



The Public Service Commission

State of South Carolina

Jocelyn Boyd
Chief Clerk/Administrator
Phone: (803) 896-5133
Fax: (803) 896-5246

COMMISSIONERS
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Clerk's Office
Phone: (803) 896-5100
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December 12, 2018

IN RE: DOCKET NO. 2018-379-E - Enrique McMilion, Jr., Complainant/Petitioner v. Duke Energy Carolinas, LLC,
Defendant/Respondent

TO: ALL PARTIES OF RECORD
Pursuant to S.C. Code Ann. Regs. 103-845:

1. The **Complainant/Petitioner** must prefile with the Commission 1 copy of the direct testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **January 23, 2019**. (must be post-marked on or before this date).
2. The **Defendant/Respondent and the Office of Regulatory Staff** must prefile with the Commission 1 copy of direct testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **January 30, 2019**. (must be post-marked on or before this date).
3. The **Complainant/Petitioner** filing **Rebuttal Testimony** must prefile with the Commission 1 copy of the testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **February 6, 2019**. (Rebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on this date).
4. The **Defendant/Respondent and the ORS** filing **Surrebuttal Testimony** must prefile with the Commission 1 copy of the testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **February 13, 2019**. (Surrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on this date).

Please be advised that failure to comply with the instructions contained herein could result in your proposed witnesses' testimony and exhibits being excluded in the subject proceeding. Additionally, please note that failure to comply with the above on or before the dates indicated may result in the DISMISSAL of your pleading.

Sincerely,

Clerk's Office

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

CLERK'S OFFICE

NOTICE OF HEARING AND PREFILE TESTIMONY DEADLINES

DOCKET NO. 2017-32-E

3109 Hwy. 25 S., L.L.C. d/b/a 25 Drive-In and Tommy McCutcheon, Complainant/Petitioner v. Duke Energy Carolinas, LLC, Defendant/Respondent

PLEASE TAKE NOTICE that a hearing, pursuant to 10 S.C. Code Ann. Regs. 103-817, on the above matter has been scheduled to begin on **Wednesday, April 05, 2017, at 10:30 a.m.**, before the Commission in the Commission's Hearing Room at 101 Executive Center Drive, Saluda Building, Columbia, South Carolina.

INSTRUCTIONS TO ALL PARTIES OF RECORD (Applicant, Petitioners, and Intervenors only), pursuant to 10 S.C. Code Ann. Regs. 103-845:

1. The **Complainant/Petitioner** must prefile with the Commission one copy of the direct testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **February 22, 2017** (must be post-marked on or before this date).
2. The **Defendant/Respondent and the Office of Regulatory Staff (ORS)** must prefile with the Commission one copy of the direct testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **March 8, 2017** (must be post-marked on or before this date).
3. The **Complainant/Petitioner** filing **Rebuttal Testimony** must prefile with the Commission one copy of the testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **March 15, 2017**. (Rebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on this date.)
4. The **Defendant/Respondent and the ORS** filing **Surrebuttal Testimony** must prefile with the Commission one copy of the testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before **March 22, 2017**. (Surrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on this date.)

Please be advised that failure to comply with the instructions contained herein could result in your proposed witnesses' testimony and exhibits being excluded in the subject proceeding. Additionally, please note that failure to comply with the above on or before the dates indicated may result in the DISMISSAL of your pleading.

For the most recent information regarding this docket, including changes in scheduled dates included in this Notice, please refer to www.psc.sc.gov and **Docket No. 2017-32-E**.

Persons seeking information about the Commission's procedures should contact the Commission at (803) 896-5100 or visit its website at www.psc.sc.gov.

2/2/17